

¹ On July 6, 2020, Respondents filed an opposition to the habeas petition and application for preliminary injunction. (Dkt. Nos. 19–25.)

Dkt. No. 18 at 2–3.)

This Court’s independent assessment of the law leads it to align with that majority, and with Respondents. The warden of the Bergen County Jail is Mr. Augustin’s immediate physical custodian. The United States District Court for the District of New Jersey surely has the power to compel the warden to release Mr. Augustin, notwithstanding any contractual relationship between the warden’s facility and ICE. As the Honorable Valerie E. Caproni has persuasively explained:

Petitioner may be right that he is detained in the [out-of-district facility] only because ICE has contracted with the Facility to house Petitioner; that, by contrast, the Facility’s warden may move Petitioner only with ICE’s written consent; that ICE regulations purport to limit the warden’s ability to file papers responsive to habeas proceedings like this one; and that “Respondent Decker dictates every aspect of petitioner’s detention, transport, transfer, and release.” But these circumstances do not change the fact that the warden of the [out-of-district facility] is, quite literally, Petitioner’s “immediate physical custodian” and thus the proper respondent to whom this petition must be directed. *Padilla*, 542 U.S. at 439. And because the Court can identify such an immediate *physical* custodian, any inquiry into who exercises legal custody of Petitioner is irrelevant. *Id.* (“As we have explained, identification of the party exercising legal control only comes into play when there is no immediate physical custodian with respect to the challenged ‘custody.’ In challenges to present physical confinement, we reaffirm that the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent.”).

This is so notwithstanding the existence of [contractual] rules purporting to restrict the power of the [out-of-district facility’s] warden to produce Petitioner or respond to a habeas petition. A federal court’s authority “to issue an order directing the respondent to show cause why the writ should not be granted,” to “make a return certifying the true cause of the detention,” “to produce at the hearing the body of the person detained,” and (potentially) to release the petitioner is conferred by statute, 28 U.S.C. § 2243, and thus may not be derogated by agency regulations or, even less authoritatively, an agreement between federal and state authorities like the [contract] at issue here. If a court ultimately orders the warden of the [out-of-district facility] to show cause for Petitioner’s detention; to produce Petitioner for a hearing; to give him a bond hearing or release him; or to release him, period, then the warden must do so—or refuse at his peril.

Lizardo v. Whitaker, 2018 WL 6444371, at *2–3 (S.D.N.Y. Dec. 5, 2018) (internal citations omitted).

For the foregoing reasons, Respondents’ motion to transfer venue (Dkt. No. 11) is GRANTED. All previously-scheduled deadlines and conferences in this case are CANCELLED.

The Clerk of Court is respectfully directed to transfer this case to the United States District Court for the District of New Jersey. In light of the liberty interests at stake, including the risks that continued confinement may pose to Petitioner's health, the Court waives the seven-day waiting period articulated in Local Civil Rule 83.1 and directs the Clerk of Court to effectuate the transfer as soon as possible.

SO ORDERED.

Dated: July 8, 2020
New York, New York

A handwritten signature in black ink, appearing to read 'L. Liman', written over a horizontal line.

LEWIS J. LIMAN
United States District Judge